

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

LEONARDO GUTIERREZ, }
Plaintiff, }
v. } Case No.: 4:14-cv-738-MHH-JHE
SCOTT HASSEL, et al., }
Defendants. }

MEMORANDUM OPINION

On April 22, 2014, *pro se* plaintiff Leonardo Gutierrez filed this action against defendants Scott Hassel, Bryan Scot Pitman (Doc. 34, p. 1; Doc. 34-1, p. 1), Georgia H. Lund, III, Walter M. Ingram, Craig Fileccia, Kashif Chowhan (Doc. 34, p. 1; Doc. 34-3, p. 1), Christopher Purdy (Doc. 34, p. 1; Doc. 34-4, p. 2), and the United States of America. (Doc. 1). Mr. Gutierrez also moved to proceed *in forma pauperis*. (Doc. 2). The magistrate judge to whom this case originally was assigned granted that motion on June 13, 2014. (Doc. 9).

On June 28, 2017, the Court dismissed without prejudice all of Mr. Gutierrez's claims other than his excessive force claim against Mr. Pitman, Mr. Fileccia, Mr. Chowhan, and Mr. Purdy. (Doc. 20, pp. 4-5). On July 10, 2017, the magistrate judge ordered the remaining defendants to file a special report about Mr. Gutierrez's remaining claim. (Doc. 21, pp. 3-4).

The remaining defendants filed their special report on November 20, 2017. (Doc. 34). The magistrate judge treated the special report as a motion for summary judgment and ordered Mr. Gutierrez to respond to it. (Doc. 35). Mr. Gutierrez filed his response on February 26, 2018. (Doc. 36).

On June 22, 2018, the magistrate judge recommended that the Court dismiss with prejudice Mr. Gutierrez's excessive force claim against the remaining defendants. (Doc. 37 at 9). The magistrate judge advised the parties of their right to file specific written objections within 30 days. (Doc. 37, pp. 9-10). To date, Mr. Gutierrez has not objected to the magistrate judge's report and recommendation.

A district court "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court reviews legal conclusions in a report *de novo* and reviews for plain error factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n. 9 (11th Cir. 1993); *see also LoConte v. Dugger*, 847 F.2d 745, 749 (11th Cir. 1988); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).¹

Having reviewed the complaint, the plaintiff's medical records, and the magistrate judge's report and recommendation, the Court finds no misstatements of

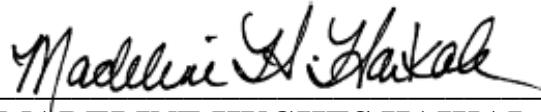
¹ When a party objects to a report in which a magistrate judge recommends dismissal of the action, a district court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C).

law in the report and no plain error in the magistrate judge's factual findings.

Therefore, the Court adopts the magistrate judge's report.

The Court will issue a separate final order entering judgment as a matter of law in favor of defendants Bryan Scot Pitman, Craig Fileccia, Kashif Chowhan, and Christopher Purdy.

DONE this 10th Day of September, 2018.


MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE